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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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08/25/2006

Daiju Yuki

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513 7590 10/05/2010

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EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

NOTIFICATION DATE

DELIVERY MODE

10/05/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Art Unit: 1651

Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the extensive amendments to claim 6 to add "applying an effective amount" as well as the addition of various families of plants which encompass a large variety of divergent members, including issues of new matter and under 35 U.S.C § 112. Issues of new matter and under 35 U.S.C § 112 are raised, for example, regarding the determination of an effective amount of the bacteria of interest against any and all bacteria, any and all fungi and any and all viruses for the large number of monocots and dicots encompassed by the proposed claim. As an example, the dicot family Chenopodiaceae comprises approximately 1300 species of chenopods worldwide which range from annual herbs to trees while the monocot family Liliaceae comprises about 4000 species. A huge range of diverse unknown pathogenic bacteria, fungi and viruses is encompassed by the claimed invention as "controlled" in a myriad of diverse habitats.

Response to Arguments

Applicant's arguments have been fully considered to the extent that they pertain to the claims now of record but they are not deemed to be persuasive.

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see **37 CFR 1.116**) or reinstate previously canceled claims.

Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under **37 CFR 1.116(b)(3)** is expected in all amendments after final rejection, i.e., " An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented."

The arguments presented pertain to claims that are not entered. They are not persuasive of error in the rejection made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Irene Marx/
Primary Examiner
Art Unit 1651